

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

July 3, 1984

Jack Katz  
Chief Deputy City Attorney  
Office of City Attorney  
City Administration Building  
San Diego, CA 92101

Re: Our Advice Letter No. A-84-112

Dear Mr. Katz:

A few weeks ago, we discussed your concerns regarding Mr. Leidigh's advice to you in our letter No. A-84-112. Unfortunately, our telephone conversation was cut short and we never fully completed our discussion. I advised you that the Commission's staff stands behind the advice contained in Mr. Leidigh's letter. Specifically, I told you that I agreed with Mr. Leidigh's advice that, where a purchaser of land is an individual who intends to use the land for personal purposes, the test for measuring a material financial effect upon that individual, as a source of income to the seller/official, is the same test as for the official (i.e., 2 Cal. Adm. Code Section 18702(b)(2)). I also agree with his advice that both Ms. Sterkel and her daughter are sources of income under the facts of this situation.

If you disagree with our staff advice, you can seek a formal Opinion from the Commission. However, since I have not heard from you, I assume that you do not wish to pursue this matter further.

I would also like to point out that newspaper accounts of the original sale arrangements on the Mayor's La Jolla Valley property indicate that escrow was originally opened with a separate purchaser (neither Ms. Sterkel nor her daughter) who was legally committed to buy the property. However, the Mayor was able to back out of the deal and sell it instead to Ms. Sterkel, who bought it for her daughter. You should keep in mind that, if these facts are true, the first purchaser made a legally enforceable promise to pay Mayor Hedgecock \$250 or

Jack Katz  
July 3, 1984  
Page 2

more (considerably more). Such a promise would make that purchaser, as well as Ms. Sterkel, a "source of income" to Mayor Hedgecock within the meaning of Government Code Section 87103(c); disqualification could be required as to any decisions affecting the first purchaser until 12 months have passed from the termination of his promise (i.e., when the property was sold to Ms. Sterkel). Mayor Hedgecock should keep this in mind in order to avoid possible conflict of interest situations involving the first purchaser.

Should you have further questions regarding this letter or our Advice Letter No. A-84-112, I may be reached at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, reading "Barbara A. Milman".

Barbara A. Milman  
General Counsel

BAM:plh

# State of California



## Fair Political Practices Commission

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Technical Assistance  
(916) 322-3662

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• • Enforcement • •  
322-6441

May 23, 1984

Jack Katz  
Chief Deputy City Attorney  
Office of City Attorney  
City Administration Building  
San Diego, CA 92101

Re: Your Request for Advice  
Our No. A-84-112

Dear Mr. Katz:

You have written seeking our advice on behalf of Mayor Roger Hedgecock. Based upon a review of the materials forwarded by you and our recent telephone conversations, we are unable to give you specific advice without further specific facts first being provided to us.

I have reviewed your two legal memoranda and generally agree with their combined analysis with the exception of page 5 of the 3/19/84 memo. However, this is not a statement of agreement with the conclusions because we have not been presented with sufficient facts to enable us to reach a firm conclusion.

We do not agree with your discussion on page 5 of the 3/19/84 memorandum; it does not accurately reflect the Commission's position on the subject of what constitutes a material financial effect upon a source of income which is not a business entity. It is the Commission's position that the "significant effect" test is an objective test. While it does not have the "quantitative exactitude" that you have used to describe the other tests, it does have an objective rather than a subjective application. In particular, with respect to an individual who is a source of income to the official, where the decision will affect real property held by the individual, the test set forth in 2 Cal. Adm. Code Section 18702(b)(2) is the appropriate one to apply.

Jack Katz  
May 23, 1984  
Page 2

In the instant situation, as we understand the facts,<sup>1/</sup> Mayor Hedgecock sold his parcel of property to Ms. Loraine Sterkel, she purchased the property for \$82,500 in cash for her daughter because her daughter wanted to purchase the property; however, the daughter's money was tied up in a trust fund. As soon as the daughter obtains the money from the trust fund, she will complete the transaction with Ms. Sterkel. Under these facts, both Ms. Sterkel and her daughter are sources of income<sup>2/</sup> to Mayor Hedgecock. Consequently, for a period of 12 months from the date of close of escrow he will be required to disqualify himself as to any decision which will have a reasonably foreseeable material financial effect on Ms. Sterkel or her daughter. As pointed out above, the test to be used is that set forth in 2 Cal. Adm. Code Section 18702(b)(2) and is not determined by Ms. Sterkel's "portfolio." Given the sale price of the parcel (\$82,500), any decision having a reasonably foreseeable effect of \$1,000, up or down, on the fair market value will be "significant" as to Ms. Sterkel or her daughter. The same test would apply if Mayor Hedgecock still owned the property or if he holds any residual interest in it.

It is unclear to us from the facts you have presented what the next decision affecting the "La Jolla Valley Project" will be, and what effects upon the subject parcel are foreseeable. Consequently, we are unable to carry our analysis any further. However, we trust that our comments herein will be of assistance to you. Should the Mayor desire further analysis on

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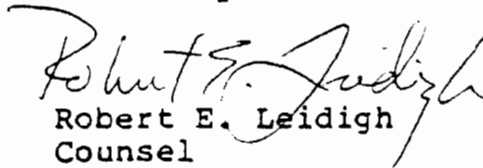
<sup>1/</sup> Keep in mind that we have not been provided all the material facts and consequently, our advice in this regard is merely to assist you in your analysis and does not carry with it the immunity otherwise provided by Government Code Section 83114(b).

<sup>2/</sup> Where parties have acted jointly in making the decision to purchase goods or services, both are considered as sources of income to the seller, regardless of whose money is used. It is our understanding that Ms. Sterkel and her daughter are both "in the jurisdiction" as each resides in or has business dealings within the City of San Diego.

Jack Katz  
May 23, 1984  
Page 3

our part, we will be pleased to provide it upon receipt of all the material facts pertinent to the question.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

---

ROBERT S. TEAZE  
ASSISTANT CITY ATTORNEY

CURTIS M. FITZPATRICK  
SENIOR CHIEF DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

JOHN W. WITT  
CITY ATTORNEY

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SAN DIEGO, CALIFORNIA 92101-3863  
(619) 236-6220

March 26, 1984

Fair Political Practices Commission  
Legal Division  
P. O. Box 807  
Sacramento, CA 95804

Dear Sirs:

Re: Advice Letter Concerning  
"Source of Income" Conflict

I am, by this letter, requesting an Advice Letter pursuant to the provisions of California Administrative Code section 83114(b). This letter also confirms my conversation with Bob Leidigh in respect thereto.

The facts and circumstances concerning the situation leading to my request relate to the ownership of property by Mayor Roger Hedgecock which was located in close proximity to a proposed project which was presented to City staff and processed for eventual Council action. Mayor Hedgecock was opposed to the proposal and made public that opposition.

During the review process (prior to presentation to Council) Mayor Hedgecock asked us for an opinion concerning a possible conflict on his part because of his ownership of property nearby. I have attached, as Attachment A, our Opinion No. 84-2 which responded to his inquiry. As a result of a possible additional issue raised by your office, we issued an addendum to Opinion No. 84-2, attached hereto as Attachment B. That addendum addresses the "source of income" aspect of the problem. The opinions set forth the pertinent facts of the problem and speak for themselves.

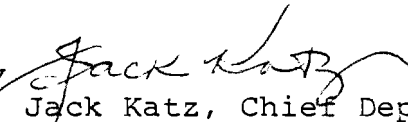
The individual identified as purchaser of the property in question is Ms. Loraine Sterkel. We do not know her. We have been advised by the Mayor that he does not know her. As a result of the sale by him and purchase by her, she has become a "source of income" to him, [Cal. Gov't. Code section 82030(a)], and he has been so advised.

We are generally aware and have been advised of the process used to determine whether or not a "significant" financial effect inures to a source of income [Cal. Admin. Code section 18702]. In light of that, I contacted Ms. Sterkel to ascertain the extent of her portfolio. She has advised me that she owns her own home in Solana Beach (conservatively valued by her at \$275,000); eight (8) industrially zoned lots in San Marcos, California; a condominium in La Jolla; and commercial properties in Borrego Springs, California. Ms. Sterkel is engaged in real estate with the Rand & Stewart Realty Company in Rancho Santa Fe so she arguably is well versed in real estate values. She became aware of the property by virtue of her business in the area. She, too, asserts that she does not know Mayor Hedgecock.

The La Jolla Valley matter has been continued until June 1984 at the developer's request. Based upon the information presented above, we request your advice in respect to the possible financial impact upon Ms. Sterkel's portfolio, which may arise as a result of Mayor Hedgecock's participation in the La Jolla Valley matter. We are aware that other financial interests of Ms. Sterkel may be impacted by separate governmental actions; however, the properties listed above are outside the jurisdiction (as defined) of the La Jolla Valley project.

Sincerely,

JOHN W. WITT, City Attorney

By   
Jack Katz, Chief Deputy

JK:mmm:048

Enclosure: Attachments A and B

ROBERT S. TEAZE  
ASSISTANT CITY ATTORNEY  
CURTIS M. FITZPATRICK  
SENIOR CHIEF DEPUTY CITY ATTORNEY

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(619) 238-6220

OPINION NO. 84-2

DATE: February 23, 1984

SUBJECT: Potential Conflict of Interest  
Re: Ownership of Property

REQUESTED BY: Mayor Roger Hedgecock

PREPARED BY: Jack Katz, Chief Deputy City Attorney

QUESTION PRESENTED

1. Do you, by virtue of your ownership of a 2.56 acre parcel of property in close proximity to the proposed La Jolla Valley project, have a conflict of interest which would preclude you from participating in any proceedings concerning that project?

CONCLUSION

Pursuant to the provisions of the Political Reform Act of 1974, as amended, and based upon the facts we have been provided, you may have a conflict of interest which would preclude your participation in any of the La Jolla Valley proceedings before the City Council. We emphasize may have since we do not possess property appraisal expertise and consequently cannot gauge the degree of financial impact that may occur upon the property in question.

QUESTION PRESENTED

2. If you sell the property prior to commencement of any Council action on the La Jolla Valley project, would the potential conflict of interest be averted, thereby allowing you to participate in the proceedings?

CONCLUSION

Should you sell the property prior to any proceedings thereon by the City Council, you will have avoided any potential for conflict of interest. This conclusion assumes, however, that the sale divests you of any and all ownership interest in the property and is fully executed prior to the initiation of Council proceedings.

ATTACHMENT A



BACKGROUND

In 1978, you and your wife, Cindy, purchased a 2.56 acre lot (Lot 44) in Section 26, located in the unincorporated area of San Diego County. Within the City limits, adjacent to Section 26, is the proposed site of La Jolla Valley project (herein called "project"), a 5,100 acre proposed development. The proposal has been submitted by the owners of the property, Campus Crusade for Christ. Your single family 2.56 acre lot is 2,700 feet at the closest point from the property. [See Attachment A.]

The 5,100 acres are part of a larger area currently identified and designated in the City's General Plan for future urbanizing. The proposal submitted by the property owners would require a General Plan amendment to change the designation from future urbanizing to planned urbanizing and would remove development restrictions thereby permitting immediate planned development of the project. The proposal also envisions development, in phases, over a period of forty years. We are further informed that the first phase of development is a 500-600 acre industrial park which is to be located in the northern portion of La Jolla Valley immediately adjacent to and east of Section 26. Such General Plan amendment requires Council action and a hearing on the matter is presently scheduled for March 20, 1984.

Because of the proximity of the project property to your 2.56 acre lot, you have asked for a legal review and our opinion whether or not any conflict of interest may exist. You also indicated to us that should a conflict or significant potential conflict of interest arise because of your ownership, you would sell the lot. You then asked whether such divestiture would remove the conflict.

ANALYSIS

Conflict of Interest: The pertinent provisions related to and governing conflict of interest are contained in the Political Reform Act of 1974, as amended. The applicable sections provide as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, [emphasis added] on:

. . . . .

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

. . . . .

Cal. Gov't. Code § 87103

Quoting from an early FPPC opinion, as the foregoing sections specify, "several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Section 87103. Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial interest must be distinguishable from its effect on the public generally." [1 FPPC Op. 198 (1975)]

The terms "material financial effect" and "effect on the public generally" have been discussed in various FPPC opinions [see, 1 FPPC Op. 198 (1975); 3 FPPC Op. 38 (1977); FPPC Advice Letter 7-9 (10-16-81)]; and are defined in Title 2, Sections 18702 and 18703, of the California Administrative Code in pertinent part as follows:

§ 18702. MATERIAL FINANCIAL EFFECT.

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question. [Emphasis added.]

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

. . . . .

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

. . . . .

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000).; or
2. One-half of one percent if the effect is one thousand dollars (\$1,000) or more.

Cal. Admin. Code § 18702

§ 18703. EFFECT ON THE PUBLIC GENERALLY.

A material financial effect of a governmental decision on an official's interests, as described in Government Code § 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. . . . .

Addressing the issue governed by Section 18703, it would be our opinion that since a relatively small percentage of San Diego's residents or property owners will have the benefit of living or owning property adjacent or within reasonable proximity to the proposed project, any financial effect on your property of a decision on the project would be distinguishable from the effect of such action on the general public. The FPPC has ruled on several occasions regarding financial effects upon real property in or immediately adjacent to planned improvement areas. [See cites, supra; see also, Witt v. Morrow, 70 Cal.App.3d 817, 139 Cal.Rptr. 161 (1977).] The circumstances herein, where the property at issue is located some distance further than those previously considered, presents a situation not necessarily on all fours with prior FPPC opinions and must be considered accordingly. The distance, in and of itself, is not an exempting factor but must be treated as one variable in the legal formula. The possibility of financial impact at a distance of 2,700 feet is still quite likely. The arguments pro and con, as developed

before the Planning Department and Planning Commission as set forth below, appear to support that conclusion.

Having so concluded, the issue then becomes whether the financial impact is material, as specified in Section 18702 of the California Administrative Code. [See, section cite, at p. 3] In regard to the question of materiality, we note the conflicting data and presentations by the proponents and opponents of the proposed project. The arguments in favor appear to be:

1. Creation of an industrial park with a concurrent opportunity for hundreds of additional jobs.
2. A graduate level university providing an academic environment.
3. Construction of several thousand homes, with a percentage thereof "pledged" to low or moderate income purchasers.
4. Increased income and revenues to The City of San Diego.
5. More services provided in the project area.

The arguments against the proposal, include, but are not limited to:

1. The proposal is premature and would create "leapfrog" development resulting in urban sprawl.
2. Projected housing needs (per SANDAG) can be more than adequately accommodated by housing capacities of community plans already adopted.
3. Projected benefits and revenue estimates are overly optimistic leading to the possibility that interim costs of providing public services would most likely be borne by the City.
4. Commuter traffic would be increased, adversely affecting air quality in the region.

Irrespective of the relative merits of any of the above arguments, it is not unreasonable to affirm our conclusion that some financial impact on your property would be likely.

It is uncertain, however, what the extent of financial impact would be upon your financial interest. Consequently, we would

conclude that a material financial effect is reasonably foreseeable only if the proposed project affects your property by the requisite amount in California Administrative Code § 18702(b) (2), i.e., the lesser of \$10,000 or one-half of one percent if the effect is \$1,000 or more. As we indicated at the outset, our office does not possess the necessary property appraisal expertise to make such determination. Such evaluation should be conducted by a qualified expert.

Since it appears that the value of your property located approximately one-half mile from the proposed project, would be affected by either an approval or disapproval of the La Jolla Valley project, and since the one-half of one percent of value criterion would probably be applicable in your fact situation, and in the absence of an appraisal as to the actual financial impact the approval or disapproval of the project would have on your property, it is our conclusion that you should, as a matter of prudence, abstain from any participation in the proceedings of the City Council which deal with the project.

Sale of Property: You have indicated your willingness and intention to sell the 2.56 acre lot in the event a conflict or significant potential conflict exists. In that regard, you asked whether such sale would remove the conflict issue as a legal bar to your participation in the La Jolla Valley proceedings. After a comprehensive review of the applicable statutes and history thereto, it is our opinion that complete divestiture, by sale, of the property in question would make the conflict issue inapplicable and permit you to participate in the proceedings. This opinion is based upon the provisions of Sections 87100 and 87103 which we interpret to mean that a public official does not have a conflict when participating in a governmental decision affecting real property in which he (or she) does not have a financial interest (as defined). However, that conclusion is predicated on several conditions which we feel are necessary to fully comply with the spirit and letter of the law. They are:

1. The sale must be final, fully executed and title conveyed prior to March 20, 1984. A binding contract of sale or open escrow would not satisfy this requirement.
2. The sale must be an "arms length" transaction.
3. There should be no condition of sale reserving any right of repurchase.

Mayor Roger Hedgecock


-7-

February 23, 1984

4. You should completely divest yourself of any and all right, title or interest in the property.

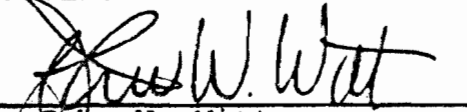
Respectfully submitted,

JOHN W. WITT, City Attorney

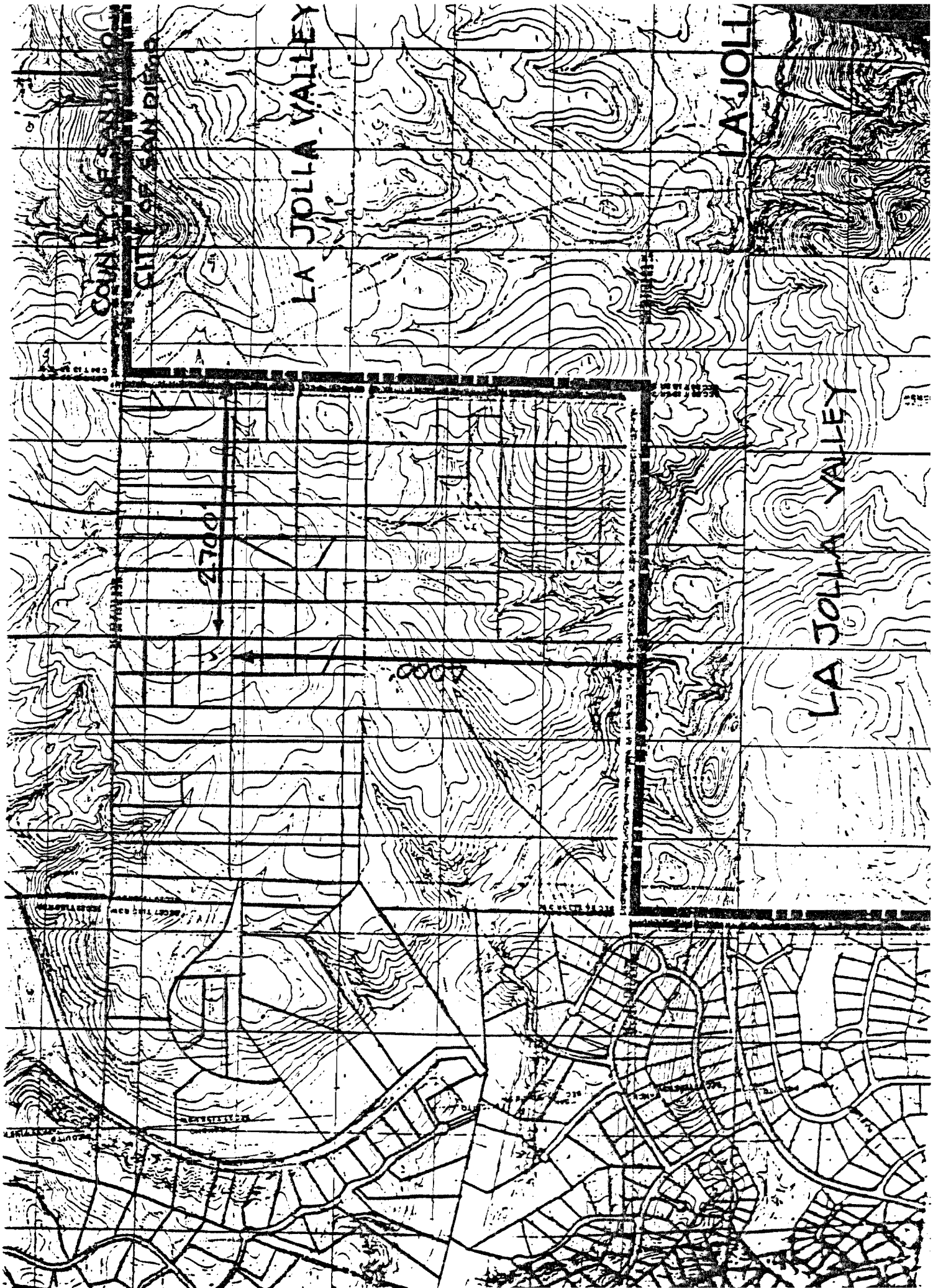
By   
Jack Katz, Chief Deputy

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Attachment

APPROVED:

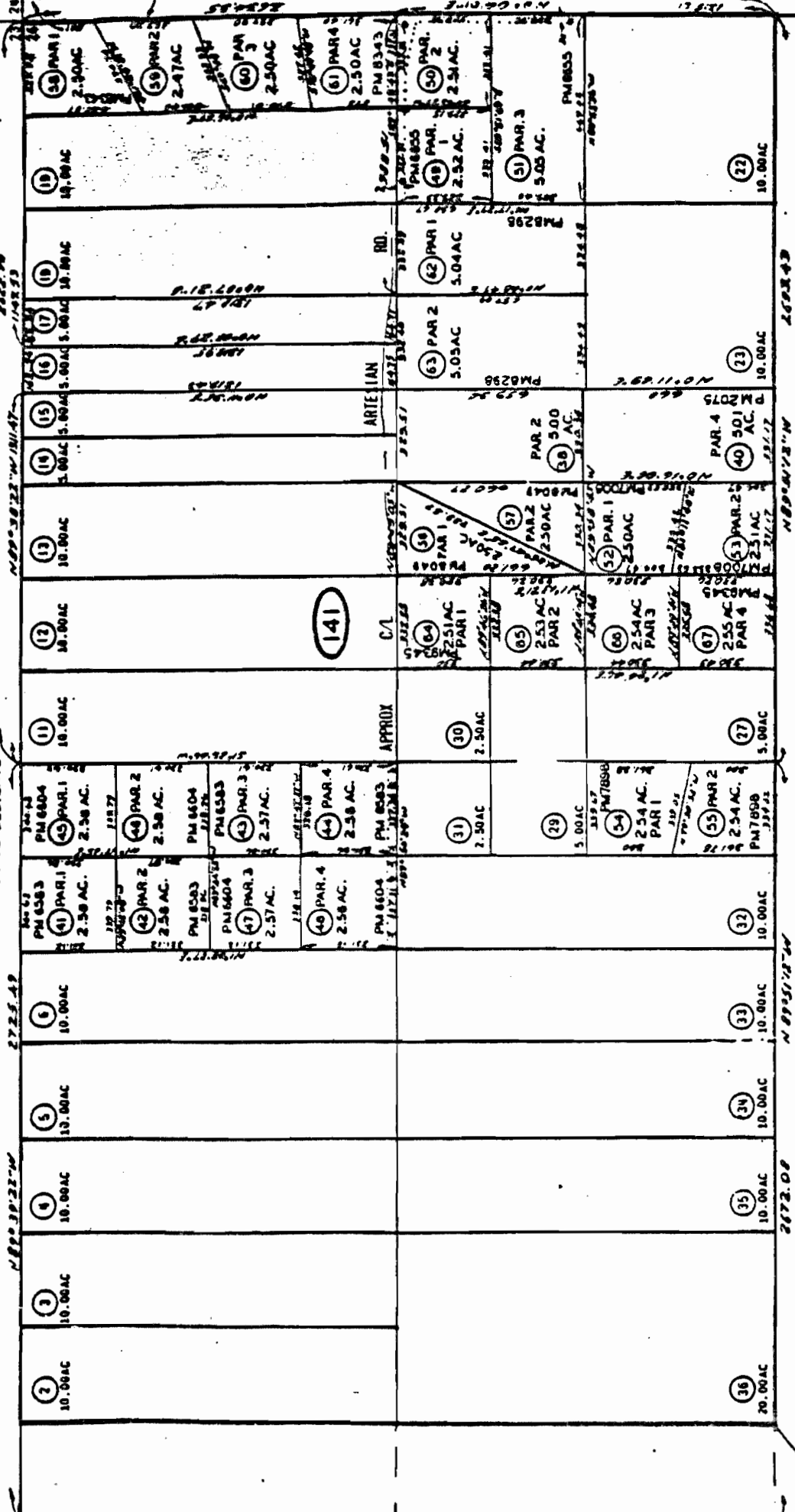
  
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John W. Witt  
City Attorney

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ROBERT S. TEAZE  
ASSISTANT CITY ATTORNEY  
CURTIS M. FITZPATRICK  
SENIOR CHIEF DEPUTY CITY ATTORNEY

OFFICE OF  
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ADDENDUM TO  
OPINION NO. 84-2

DATE: March 19, 1984  
SUBJECT: Potential Conflict of Interest  
Re: Ownership of Property  
REQUESTED BY: Mayor Roger Hedgecock  
PREPARED BY: Jack Katz, Chief Deputy City Attorney

On February 23, 1984, this office forwarded to you our Opinion No. 84-2, relating to the above-captioned subject. That opinion responded to questions posed by you concerning the effect of your ownership of Lot 44 in Section 26 in the unincorporated area of San Diego County (herein called "Lot 44") as it related to any potential conflict in regard to the proposed La Jolla Valley project.

Your inquiry was restricted to the issues of any potential conflict existing by virtue of ownership of Lot 44 and whether such potential conflict could be averted by sale of the property. Our opinion was similarly restricted to such issues.

It has since come to our attention that a further aspect of the conflict of interest provisions (in addition to those posed by your questions) should have been discussed and provided in our opinion for your guidance. By means of this addendum to our Opinion No. 84-2, we offer you an explication of the additional issue which is contained in the Political Reform Act (herein "Act") and relates to a situation which may or may not come to pass. Our concern is that you are fully apprised of the provisions and the consequences of the sale of your property.

We indicated to you (on pp. 6 and 7) in our Opinion No. 84-2 the legal consequences that would ensue by your sale of Lot 44. We also set forth those conditions of sale that are foreseeably necessary, as a minimum, to achieve such compliance with the law. The advice regarding sale of the property and the conditions related thereto, were only intended to apply to averting the potential conflict of interest about which you inquired; that is, the situation in

ATTACHMENT R

respect to La Jolla Valley and participation in those governmental proceedings. To that extent only, the opinion is responsive to your inquiry.

To this point, we have concerned ourselves (as we did in Opinion No. 84-2) with those sections of the Act governing conflict by virtue of ownership of property [Cal. Gov't. Code section 87103(b)] and material financial effect [Cal. Admin. Code section 18702(b)(2)(B)]. However, there is another provision of the Act which you did not ask about and which we did not address in our initial opinion. Upon reflection, we feel duty-bound to advise you of that provision. It reads as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally on:

. . . . .

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. [Emphasis added.]

. . . . .

Cal. Gov't. Code section 87103

Income is defined as follows:

"Income" means, except as provided in subsection (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any

income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title. [Emphasis added.]

Cal. Gov't. Code section 82030(a).

Construing the above-cited provisions of the Act, as we must, it becomes apparent that your sale of Lot 44 results in your receipt of income; and the purchaser thereof becomes a source of such income. So, even though a complete and final sale of the property occurs which fully divests you of any and all ownership interest (as set forth in our Opinion) and the conflict of interest issue in respect to section 87103(b) is averted, the sale will nevertheless create the prospect for a new, separate and distinct conflict problem pursuant to section 87103(c). The purchaser becomes a "source of income" for the twelve-month period following the sale.

The meaning and impact of the above provision [87103(c)] is that you will be disqualified from participating in any process or decision which would have a reasonably foreseeable material financial effect upon the purchaser of Lot 44. The degree of financial impact required to meet the test of materiality is different than that originally set forth in Opinion No. 84-2 because we are now faced with a "source of income" category as opposed to ownership of property. The measure of materiality is "the significance thereof" [Cal. Admin. Code section 18702] and each such decision must be separately analyzed to determine the level of impact upon the purchaser.

A not dissimilar issue was addressed by the Fourth District Court of Appeals in 1977 wherein then Councilman Floyd Morrow attempted to participate in proceedings involving redevelopment of a shopping center in Linda Vista. Mr. Morrow was deputy chairman of the Redevelopment Agency. Mr. Morrow was, at the time, also president and attorney for an investment company (BEE) which owned property adjacent to the proposed redevelopment. In that capacity, he was paid a salary by the investment company in excess of \$250. Mr. Morrow claimed that he was not precluded from participation because his remuneration from the investment company (the source of income) was "fixed" and any profits realized by the company would have no effect on him. The court addressed that issue in the following manner:

Morrow claims decisions concerning the redevelopment in Linda Vista have no "material financial effect" on him because he receives a set amount each month. The unstated implication is even if BEE were to reap large profits Morrow's salary would remain the same. However, the statute is concerned with whether there will be "a material financial effect . . . on [a]ny source of income [over \$250] [emphasis]. . . ." (Cal. Gov. Code section 87103). . . . There was no need to give specific dollar amounts or percentage increase of the appreciation BEE might expect.

Morrow argues the experts' testimony only showed redevelopment of the Center could have a significant impact on the value of BEE's properties and did not prove it. The statute, however, requires only it be "reasonably foreseeable . . . the decision will have [a]n . . . effect." (Emphasis, Gov. Code section 87103.) There was testimony to this effect.

Witt v. Morrow, 70 Cal.App.3d 817;  
139 Cal.Rptr. 161 (1977).

The Morrow case is distinguishable from the present situation in that he (Morrow) was, and continued to be, a salaried officer of the corporation which stood to gain financially as a result of his governmental decision and action. The fact that his monthly income would arguably remain the same was deemed to be irrelevant. That distinction aside, however, the underlying principle of financial impact upon a source of income is the common denominator with which we are concerned and the appellate court's articulation of that concept in Morrow is equally applicable herein to your "source of income." That leads us to the guidelines used to measure "material financial effect."

The measure of materiality of financial effect is set forth in Cal. Admin. Code section 18702. The three categories which are addressed are (1) effect upon a business entity in which the public official holds a direct or indirect investment of \$1,000 or more or in which the public official is a director, officer, partner, trustee or holds any position of management [section 18702(b)(2)(1)]; (2) effect upon real property in which the public official holds a direct or indirect interest of \$1,000 or more [section 18702(b)(2)]; and (3) the effect upon a public official's source of income of \$250 or more [section 18702(b)(3)].

The parameters set forth for business entity and ownership of property are identified with quantitative exactitude. So, similarly, is the source of income category when that source is a business entity [see, section 18702 (b)(2)(c)]. However, if the source of income is an individual [see, section 18702(b)(2)(d)], we are advised (by the FPPC) that the accepted practice is to subjectively determine the significance of the effect.

The Fair Political Practices Commission (FPPC) applies the "subjective determination" method to determine the significance of the effect. However, in its determinative process, the FPPC looks to the effect on the source's entire portfolio and as a result thereof, concludes whether or not that result is significant. In the Morrow case, there was evidence that the properties impacted constituted 25 percent of BEE's assets and the appellate court concluded that was significant.

In summary of the above, the purchaser of Lot 44 becomes, for the next twelve months, a "source of income" to you. In the event that the purchaser should pursue a governmental decision from the City Council affecting his or her economic interests (i.e., total portfolio, including Lot 44) as specified in section 87100, et seq., you would be faced with the prospect of a conflict in respect to that purchaser and the necessity to refrain from any participation in those proceedings.

In the course of preparing this legal addendum, we have been advised that your Lot 44 has been sold, in a completed and unconditional transaction, to a Ms. Loraine Sterkel. Said sale was handled by Clotfelter-Tilton Real Estate in Rancho Santa Fe. You have also advised us that you do not know Ms. Sterkel. In view of these facts, and based solely thereon, we are persuaded that the conditions of divestiture that we set forth in Opinion No. 84-2 have been satisfied as it relates to averting the conflict of interest question regarding your previous ownership interest in Lot 44 and the proposed La Jolla Valley project.

In regard to any possible "source of income" determination, we are not privy to Ms. Sterkel's holdings or portfolio; however, the impact of any possible transactions for the next twelve months sought from the City by Ms. Sterkel, or anyone else, which would impact her holdings, would be measured by the "total portfolio" test alluded to above. At this point, any calculation would be hypothetical.

We are further advised that the March 20, 1984 scheduled hearing for La Jolla Valley may be continued for three months at the proponent's request. Since no legislative action will be involved, and the FPPC has been so apprised, you may, if required, participate in the matter to continue.

Mayor Roger Hedgecock


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March 19, 1984

We have spoken with the FPPC and at its suggestion, will submit a request for an Advice Letter on the entire issue. The FPPC issues such Advice Letters within a statutorily set twenty-one working day period [Cal. Admin. Code section 83114(b)].

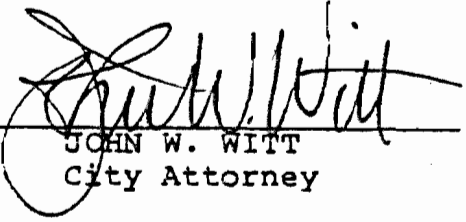
Respectfully submitted,

JOHN W. WITT, City Attorney

By   
Jack Katz, Chief Deputy

JK:smm:048(x043)

APPROVED:

  
JOHN W. WITT  
City Attorney